UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC., Plaintiff, -against- NINTENDO CO. LTD. and NINTENDO OF AMERICA, INC., Defendants.	82 Civ. 4259 PLAINTIFF'S RESPONSE TO DEFENDANT'S THIRD SET OF INTERROGATORIES AND THIRD REQUEST FOR PRODUCTION TO PLAINTIFF

Plaintiff Universal City Studios, Inc. ("Universal") answers the Third Set of Interrogatories and Third Request for Production of Nintendo of America, Inc. as follows:

Interrogatory No. 1

Identify each and every present authorized use in commerce of the name, character and/or story of King Kong identifying:

(1) the user;

(2) the nature of the use;

(3) the authority by which the use is authorized; and

(4) the date the use commenced.

Response to Interrogatory No. 1

For the purpose of this answer, Universal assumes that by "present authorized use in commerce" defendant means each

publishing rights referred to in plaintiff's response to Interrogatory No. 4 of defendant's first set of interrogatories.

Response to Interrogatory No. 4

Documents which refer or relate to the publishing rights in King Kong held by Richard Cooper have been previously produced for defendant's inspection in response to defendant's Interrogatory No. 4 of defendant's First Set of Interrogatories.

Interrogatory No. 5

Identify the specific "(i) pictures taken from RKO's motion picture 'King Kong' released in 1932 or Dino De Laurentiis' remake of that picture released in 1976 and (ii) advertising and promotional materials for those motion pictures" referred to in plaintiff's response to Interrogatory No. 10 of defendant's second set of interrogatories. Please attach copies of all such pictures and promotional materials to your response.

Response to Interrogatory No. 5

Defendant already has in its possession, pictures taken from RKO's 1933 motion picture as these were produced for defendant by William Regan at the commencement of his deposition. Universal's counsel is endeavoring to obtain pictures and advertising material relating to Dino De Laurentiis' 1976 "King Kong" remake from Paramount and will

furnish defendant with this material as soon as it is made available to Universal.

Interrogatory No. 6

Describe in detail any and all efforts undertaken by Universal, or anyone acting on its behalf, to market, merchandise, promote, publicize, and advertise the name, character and/or story of King Kong, and:

(1) identify any and all advertising firms involved in that effort;

(2) identify any and all public relation firms involved in that effort;

(3) itemize all sums expended in these efforts;

(4) set forth the dates on which these efforts were undertaken; and

(5) identify any and all individuals involved with these efforts other than Mr. Steve Adler and Ms. Loretta Sifuentes.

Response to Interrogatory No. 6

(1) As defendant is aware, Universal derives its rights in the King Kong name, character and story from agreements it entered into with Richard M. Cooper and RKO that resulted from Universal's lawsuits against those parties in state and federal court in California in 1975. Efforts to commercially exploit the name "King Kong," the King Kong gorilla and story elements which the public identifies with the "King Kong" motion pictures prior to that time and up to 1980, (the year in which Universal commenced its "King Kong" merchandising activities) were by others; namely, RKO and its licensees, and have been described for defendants in (a) the deposition given by William Regan and (b) documents produced for defendant's inspection in response to previous discovery requests. Since Universal has succeeded to the merchandising rights in King

Kong held or exercised by others in the years since the first release of RKO's 1933 "King King" motion picture, it can fairly be said that all such prior promotional and merchandising efforts and the good will generated by them for the "King Kong" name and character inure to Universal's benefit and were on Universal's present behalf.

Universal's own efforts to commercialy exploit the rights it derived in the King Kong name, character and story from these other parties began in November 1980 when Universal's affiliate, Merchandising Corporation of America (MCA) entered into negotiations which subsequently culminated in MCA's licensing Ben Cooper Inc., (in December 1980) to manufacture and sell costumes. Universal's other King Kong promotional and merchandising efforts are described in Universal's response and supplemental response to defendant's First Set of Interrogatories, specifically Interrogatory Nos. 2, 3, 6, 7, 12, 15, 24 and 41, the deposition testimony of Mr. Sid Sheinberg, and in the documents Universal has previously produced and is presently producing in conjuction with its answers to these interrogatories.

(2) Universal does not customarily employ the services of public relations and advertising firms to promote and publicize Universal's trademarks and hence it has not sought to use such firms in conjunction with the licensing and sale of products and services displaying the King Kong name, character or story. Universal did, however, authorize Robert Keith & Company to construct and arrange for the display on top of the Empire State Building of a King Kong gorilla balloon in conjunction with the 50th anniversary celebration of RKO's 1933 "King Kong" motion picture in New York during the first two weeks of April. See Plaintiff's Supplemental Responses to defendant's First Set of Interrogatories, Interrogatory No. 7.

(3) As Universal does not employ such firms to promote the King Kong name or character, it has expended no such sums.

(4) Universal commenced the commercial exploitation of its "King Kong" trademarks in approximately December 1980.

(5) Individuals other than Mr. Adler and Ms. Sifuentes who can fairly be described as "involved" with Universal's and Merchandising Corporation of America's merchandising programs have already been identified by Universal in responses given to previous interrogatories.

Interrogatory No. 7

Identify any communications Universal, its affiliates, or anyone acting on behalf of Universal or its affiliates, has had since the date of Universal's response to defendant's first set of interrogatories to or from any licensees of Nintendo of America Inc. relating to this lawsuit or the use of the name Donkey Kong stating:

(1) the date of the communication;

(2) the substance of the communication;

(3) the name of the licensee; and

(4) the result, if any, of the communication.

Response to Interrogatory No. 7

See Universal's supplemental response to defendant's First Set of Interrogatories, Interrogatory Nos. 2 and 7, the deposition testimony of Mr. Sid Sheinberg, and the document produced in Document Folder No. 8.

Interrogatory No. 8

Identify all documents that refer or relate to the communications referred to in Interrogatory No. 7.

(4) any and all distributors of these goods;

(5) the date on which this mark was first used on goods in interstate commerce;

(6) the circumstances under which and the place where such goods were placed in interstate commerce;

(7) all other goods on which this mark has been used;

(8) the manufacturer(s) of such goods;

(9) any and all distributors of such goods; and

(10) the amount and volume of all revenues and sales derived from the sale of all of the above-described goods.

Response to Interrogatory No. 13

See Universal's response to the previous interrogatory.

Interrogatory No. 14

In connection with the trademark application filed by Universal on or about February 11, 1982 (serial number 349892) in which Universal requested registration of the King Kong mark for "digital watches" and wherein Universal stated that "the trademark was first used on the goods at least as early as February 3, 1982 by Universal City Studios, Inc., please identify:

(1) the status of this applicaton;

(2) the goods on which this mark was first used;

(3) the manufacturer of these goods;

(4) any and all distributors of these goods;

(5) the date on which this mark was first used on goods in interstate commerce;

(6) the circumstances under which and the place where such goods were placed in interstate commerce;

(7) all other goods on which this mark has been used;

(8) the manufacturer(s) of such goods;

(9) any and all distributors of such goods; and

(10) the amount and volume of all revenues and sales derived from the sale of all of the above-described goods.

Response to Interrogatory No. 14

This application was granted and Universal is negotiating to enter into an agreement pursuant to which it will license "King Kong" as a trademark for watches. However, Universal does not rely on this application in support of its claims against defendants in this action and acknowledges, that the application was filed for the sole purpose of establishing a "use in commerce" on such goods at an early date.

Interrogatory No. 15

Please attach specimens of the marks used on all of the goods identified in your response to interrogatories number 12, 13 and 14.

Response to Interrogatory No. 15

See the documents in Document Folder No. 12.

Interrogatory No. 16

State what rights Dino De Laurentiis Corporation

RKO General, Inc., (a) the 1933 "King Kong" motion picture and (b) stills or scenes from that picture or "verbatim" copies thereof, this restriction being the subject of a specific provision (¶6) of the "Settlement Agreement and Release" of June 4, 1980 between Universal and RKO General, Inc. Universal does have the right, however, to use and license others to use the name King Kong, depictions of the King Kong gorilla character and story elements based on or derived from RKO's 1933 motion picture which are substantially similar to these elements as depicted in that work, without securing the consent or permission of anyone.

The "reason why" Universal would be required to secure RKO's permission before it could use or license others to use RKO's 1933 motion picture in its entirety or photographic stills of scenes in that motion picture is that the work as a whole and all elements comprising RKO's expression in that work are protected by RKO's renewal copyright in the work and Universal's rights with respect to the use of RKO's 1933 motion picture are subject to the restrictions set forth in ¶6 of its Settlement Agreement. To this date Universal has not sought such permission from RKO.

Interrogatory No. 26

State whether Universal considers each of the following or any use of each of the following to be an infringement or otherwise in derogation of its rights in King Kong; state the reasons it either does or does not consider

each of the following or uses of each of the following to be infringements or otherwise in derogation of its rights; and state with respect to each of the following what action or investigation Universal has undertaken, if any, to protect its rights, and the result of such action:

(1) Trademark registration 1,076,514 (U.S. Class 22) for "King Kong" by Mego Corporation and/or King Kong toy animal figures or playsets by Mego Corporation;

(2) Trademark registration 1,118,277 (U.S. Class 39) for "King Kong" by H. H. Brown Shoe Co. Inc. and/or King Kong footwear by H.H. Brown Shoe Co. Inc.;

(3) Trademark registration 859,531 (U.S. Class 9) for "King Kong" by Clipper Pyrotechnic Corporation and/or King Kong fireworks by Clipper Pyrotechnic Corp.;

(4) Trademark application SN 245196 (U.S. Class 51) for "King Kong de Kenzo perfume or cosmetics;

(5) Trademark registration 1,000,746 (U.S. Class 36) for "King Conga" by Carilo M. Basas and/or King Conga drums or drumsets;

(6) Trademark registration 932,343 (U.S. Class 42) for "King Congo: by Congoleum Industries Inc. and/or trademark application SN 328,600 (U.S. Class 20) by Congoleum Industries Inc. and/or King Congo rugs or carpets;

(7) Trademark registration 1,129,339 (U.S. Class 22) for "King Kong" by Bayon Enterprises and/or King Pong tennis game accessories;

(8) Trademark registration 1,161,102 (U.S. Class 22) for "The Amazing Kong" by Tufftoys Inc. and/or trademark registration 1,145,509 (U.S. Class 22) for "Kong" by Tufftoys Inc. and/or The Amazing Kong stuffed toys or Kong stuffed toys;

(9) Trademark registration 1,168547 (U.S. Class 22) for "Cheng Kong" by Kings Enterprises Co. Ltd. and/or Kong sporting articles;

(10) Trademark registration 115,321 (U.S. Class 30) for "King Thong" by Young California Shoe Inc. and/or King Thong Shoes.

(11) Trademark registration in State of California for "Kong" (U.S. Class 21) by Charles D. Jackson and/or Kong ignition devices.

(12) Trademark registration in State of Kansas of "King Kong Window Cleaners" (U.S. Class 103) by King Kong Window Cleaners.

(13) Trademark registration in State of Washington of "Kingdom Kong" (U.S. Class 50) by Frederich Herrick Malsed.

(14) "Beams King Kong 100 Months (Whisky) by Beam Distilling Co".;

(15) "Kid Kong" toys by Bandai America Inc.;

(16) "King Kong" candy by King Kup Candy Co.;

(17) "King Kong A" congas by Kaman Corporation;

(18) "King Ding Dong" playthings by Marken-Kane, Inc.;

(19) King Kong Corner at 738 Marrow Rd., Forest Park, Georgia,;

(20) King Kong Corp. at 109 Lindon Rd.; N.E., Lake Placid, Florida;

(21) King Kong Inc. at 103 S. Main, Vasson, Michigan;

(22) King Kong Sportswear at 106 Lafayette St., New York, New York;

(23) King Kong Chinese Chop Suey at 1544 W. 69th, Chicago, Illinois;

(24) King Kong Auto Sales at 109 E. San Ysidro Blvd., San Ysidro, California;

(25) King Konk, Inc. at 555 Magnatron Blvd., San Diego, California;

(26) King Kong Construction Co. in Eureka Springs, Arizona;

(27) King Kong Construction Co. at Virginia Circle, Martinez, California;

(28) King Kong Enterprise Ltd. at 498 7th Ave., New York, New York

(29) King Kong Window Cleaners at Box 3310, 2045 32nd Street, Boulder, Colorado;

(30) King Kong Window Wash & Sup. C. at 9575 Mead, Westminster, Colorado;

(31) King Kongcrete at P.O. Box 10157, Houma, Louisiana;

(32) King Kong Chimney Cleaning or King Kong Furniture Hoisting or King Kong Snow Removal or King Kong Window Washer at 1369 W. Byers Pl., Denver, Colorada;

(33) Copyright registration GP 85129 for "King Kong" for artistic jewelry by Avia Enterprises Inc.;

(34) Copyright registration GP 107694 for "King Kong" for iron-on transfers by Roach Studios;

(35) Copyright registration GP 115890 for "King Kong Bank" for sculptured work by Accents Unlimited Inc.;

(36) Copyright registration K 125595 for "King Kong" by The Wild Side, Inc.;

(37) Copyright registration GP 115014 for "King Kong" for decanter china by James B. Beam Distilling Co.;

(38) Copyright registration K 127400 for "King Kong" for a poster by John Kentz;

(39) Copyright registration K 119498 for "King Kong" for iron-on transfers by L&H Stores Inc. d.b.a. L and H;

(40) Copyright registration GP 116318 for "King Kong" for ashtray Continental Studios;

(41) Copyright registration A 660713 for "King Kong Blues" book by Sam J. Lundwall Fakta & Fantasi; and

(42) Copyright registration A 923365 for "King Kong" for joke book by Tower Publication, Inc.

Response to Interrogatory No. 26

It is unclear from the manner in which defendant has put this interrogatory whether defendant is representing to Universal that each of the 42 "King Kong" references listed in the interrogatory reflects a present use by a third party of the King Kong name or gorilla character as a trademark for goods and services. Universal would note, for example, that 10 of the 42 items listed by defendant refer to copyright registrations, there being no indication in the interrogatory whether the copyrighted works are being advertised or sold under the name King Kong and the extent to which, if any, the products covered by the copyright registration are being marketed and sold in such a way as to capitalize on the good will which the public associates with the name King Kong and gorilla character King Kong or elements from the "King Kong" motion pictures. Universal would also note that insofar as the King Kong references defendant has listed in the interrogatory refer to uses of King Kong by others that occurred prior to the time at which Universal acquired its rights in the King Kong name, character and story from Richard M. Cooper, Universal had no occasion to consider the question whether such uses were "an infringement or otherwise in derogation" of Universal's rights in King Kong. Keeping the foregoing in mind, Universal's present position with respect to the items listed by defendant is as follows:

A. Universal does not consider the following items on defendant's list to be an infringement or otherwise in derogation of Universal's rights because, having attempted to ascertain whether the companies listed are in business, Universal could not locate them and has no basis for accepting the proposition implicit in defendant's question that goods or services bearing the King Kong trademark are actually being offered to the public:

(7) Trademark registration 1,129,339 (U.S. Class 22) for "King Pong" by Banyon Enterprises and/or King Pong tennis game accessories;

(10) Trademark registration 115,321 (U.S. Class 30) for "King Thong" by Young California Shoe Inc. and/or King Thong Shoes;

(19) King Kong Corner at 738 Morrow Rd., Forest Park, Georgia;

(20) King Kong Corp. at 109 Lindon Rd., N.E., Lake Placid, Florida;

(22) King Kong Sportswear at 106 Lafayette St., New York, New York;

(26) King Kong Construction Co. in Eureka Springs, Arizona;

(27) King Kong Construction Co. at Virginia Circle, Martinez, California;

(28) King Kong Enterprise Ltd. at 498 7th Ave., New York, New York;

(29) King Kong Window Cleaners at Box 3310, 2045 32nd Street, Boulder, Colorado;

(30) King Kong Window Wash & Sup. C. at 9575 Mead, Westminster, Colorado;

(31) King Kongcrete at P.O. Box 10157, Houma, Louisiana.

B. Universal does not regard the following uses to be an infringement or otherwise in derogation of its rights because it believes these uses have been abandoned or otherwise discontinued:

(8) Trademark registration 1,161,102 (U.S. Class 22) for "The Amazing Kong" by Tufftoys Inc. and/or trademark registration 1,145,509 (U.S. Class 22) for "Kong" by Tufftoys Inc. and/or The Amazing Kong stuffed toys or Kong stuffed toys;

(15) "Kid Kong" toys by Bandai America Inc.;

(16) "King Kong" candy by King Kup Candy Co.;

C. Universal does not consider the following "King Kong" uses to be an infringement or otherwise in derogation of its rights because it is not apparent to Universal that the references relate to the gorilla character King Kong or any story elements which the public would associate with King Kong:

(6) Trademark registration 932,342 (U.S. Class 42) for "King Congo" by Congoleum Industries Inc. and/or trademark application SN 328,600 (U.S. Class 20) by Congoleum Industries Inc. and/or King Congo rugs or carpets;

(9) Trademark registration 1,168,547 (U.S. Class 22) for "Cheng Kong" by Kings Enterprise Co. Ltd. and/or Cheng Kong sporting articles;

(18) "King Ding Dong" playthings by Marden-Kane, Inc.;

(23) King Kong Chinese Chop Suey at 1544 W. 69th, Chicago, Illinois;

(25) King Konk, Inc. at 555 Magnatron Blvd., San Diego, California.

D. Universal has reviewed the following registrations which appear to use or refer to a figure based on the character

"King Kong" from the 1933 RKO motion picture. Universal does not consider these uses of "King Kong" on the products referred to in the applications to require "protective action," however, because it appears to Universal that the products and services involved are too far removed from the field of entertainment services and products or products and services which the public could reasonably be expected to believe would be licensed or approved by a company in the business or providing entertainment services and products. In short, it is Universal's position that none of these products is within the broad range of entertainment services and products which an entertainment company like Universal provides or is reasonably likely to provide given the business nature of its activities. Hence in Universal's judgment it is not likely that the use of these King Kong references will cause confusion among the public as to the source of the product or service:

(12) Trademark registration in State of Kansas of "King Kong Window Cleaners" (U.S. Class 103) by King Kong Window Cleaners;

(21) King Kong Inc. at 103 S. Main, Vasson, Michigan;

(24) King Kong Auto Sales at 109 E. San Ysidro Blvd., San Ysidro, California;

(32) King Kong Chimney Cleaning or King Kong Furniture Hoisting or King Kong Snow Removal or King Kong Window Washer at 1369 W. Byers Pl., Denver, Colorado.

E. Universal has not ascertained whether the following application consists of a use based on the character "King Kong" from the 1933 RKO movie and therefore has no basis

for determining whether goods or services bearing the King Kong trademark are actually being offered to the public:

(4) Trademark application SN 245196 (U.S. Class 51) for "King Kong de Kenzo perfume or cosmetics.

F. Universal has been assigned all rights in the trademark registration 1,076,514 by Mego Corporation (See Universal's Supplemental Response to Nintendo America's First Set of Interrogatories, Interrogatory No. 3), and therefore, does not consider the following registration to be an infringement or otherwise in derogation of its rights:

(1) Trademark registration 1,076,514 (U.S. Class 22) for "King Kong" by Mego Corporation and/or King Kong toy animal figures or playsets by Mego Corporation.

G. With respect to "Beams King Kong 100 Months" and Copyright Registration GP 115014, Universal believes this use was authorized by Paramount Pictures Corp. through its license with Dino De Laurentiis Corp. and (a) the license expired and (b) the use was discontinued:

(14) "Beams King Kong 100 Months (whisky) by Beam Distilling Co.";

(37) Copyright registration GP 115014 for "King Kong" for Decanter China by James B. Beam Distilling Co.

H. With regard to the following registration, see Universal's response to Nintendo America's Second Set of Interrogatories, Interrogatory No. 1:

(2) Trademark registration 1,118,277 (U.S. Class 39) for "King Kong" by H.H. Brown Shoe Co. Inc.

and/or King Kong footwear by H.H. Brown Shoe Co. Inc.

I. Prior to receiving defendant's interrogatories, Universal had no knowledge of the uses listed below and has been unable to locate the owners of the following registrations and therefore has no basis for determining whether goods or services bearing the King Kong trademark are being offered to the public:

(3) Trademark registration 859,531 (U.S. Class 9) for "King Kong" by Clipper Pyrotechnic Corporation and/or King Kong fireworks by Clipper Pyrotechnic Corp.;

(11) Trademark registration in State of California for "Kong" (U.S. Class 21) by Charles D. Jackson and/or Kong ignition devices.

(13) Trademark registration in State of Washington of "Kingdom Kong" (U.S. Class 50) by Frederich Herrick Malsed;

(33) Copyright registration GP 85129 for "King Kong" for artistic jewelry by Aviva Enterprises Inc.;

(34) Copyright registration GP 107694 for "King Kong" for artwork for iron-on transfers by Roach Studios;

(35) Copyright registration GP 115890 for "King Kong Bank" for sculptured work by Accents Unlimited Inc.;

(36) Copyright registration K 125595 for "King Kong" by The Wild Side, Inc.;

(38) Copyright registration K 127400 for "King Kong" for a poster by John Kentz;

(39) Copyright registration K 119498 for "King Kong" for iron-on transfers by L&H Stores Inc. d.b.a. L&H;

(40) Copyright registration GP 116318 for "King Kong" for ashtray by Continental Studios;

(41) Copyright registration A 660713 for "King Kong Blues" book by Sam J. Lundwall Fakta & Fantasi;

(42) Copyright registration A 923,365 for "King Kong" for joke book by Tower Publications, Inc.

J. Counsel for Universal is presently investigating whether the following uses are an infringement or otherwise in derogation of Universal's rights:

(5) Trademark registration 1,000,746 (U.S. Class 36) for "King Conga" by Carilo M. Basas and/or King Conga drums or drum sets;

(17) "King Cong A" congas by Kaman Corporation;

Interrogatory No. 27

State when Universal, or anyone acting on its behalf, first attempted to secure an assignment of the trademark registration number 1,076,514 filed by Mego Corp. on December 3, 1975 for toy animal figures and play sets, identify:

(1) the individuals who negotiated the assignment on Universal's behalf;

(2) the individuals who negotiated the assignment on the assignor's behalf;

(3) any consideration received by the assignor for the assignment;

(4) the reason why the assignment was sought; and

(5) the present status of the registration.

Response to Interrogatory No. 27

Joseph Di Muro, an attorney who presently serves Universal in the capacity of consultant to its law department, first sought the assignment of Mego's registration from RKO

General, Inc. in December 1982.

(1)-(3) Universal objects to the term "negotiated" as inapplicable. See documents contained in document folder 27.

(4) Universal is the successor to the registation; the assignment was necessary to establish that fact with the Patent and Trademark Office.

(5) The registration is in full force and effect.

Interrogatory No. 28

Identify all documents that refer or relate to the assignment of trademark registration number 1,076,514 to Universal.

Response to Interrogatory No. 28

See response to Interrogatory No. 27.

Interrogatory No. 29

Has Edgar Wallace, or anyone claiming through or on behalf of Edgar Wallace, ever had any right to the name, character and/or story of King Kong? If so, state the specific nature and source of this right and the time during which such right was held by any such person and the reason, if any, why such right was extinguished or otherwise lost.

Response to Interrogatory No. 29

No, at least not according to the Findings of Fact and Conclusions of Law entered on December 9, 1976 in Universal's litigation against RKO and Cooper in federal district court in the Southern District of California.

Interrogatory No. 30

Does Edgar Wallace, or anyone claiming through or on behalf of Edgar Wallace, presently have any right in the name, character and/or story of King Kong? If so, state the specific nature and source of this right.

Response to Interrogatory No. 30

No.

Interrogatory No. 31

Identify all documents that refer or relate to any right of Edgar Wallace, or any right of anyone claiming through or on behalf of Edgar Wallace, in the name, character and/or story of King Kong.

Response to Interrogatory No. 31

Documents which can be said to "refer or relate" to a claim of rights by Edgar Wallace and heirs of Edgar Wallace can be found in Document Folder No. 31 and in the documents generated in the RKO litigation, many of which have already been produced by plaintiff. See also plaintiff's response to Interrogatory No. 29.

Interrogatory No. 32

Has Edgar Wallace, or anyone claiming through or on behalf of Edgar Wallace, ever claimed or asserted any right to the name, character and/or story of King Kong? If so, state the nature of the right claimed or asserted, the person

claiming or asserting such right, the time such right was claimed or asserted, and the result of such claim or assertion.

Response to Interrogatory No. 32

Yes, the nature of the right claimed by Edgar Wallace and his heirs is referred to in the Findings of Fact and Conclusions of Law entered in Universal's litigation against RKO in federal district court for the Southern District of California on December 9, 1976.

Interrogatory No. 33

Identify all documents that refer or relate to any claim or assertion made by, through or on behalf of Edgar Wallace to the name, character and/or story of King Kong.

Response to Interrogatory No. 33

Documents responsive to this request can be found in Document Folder No. 31.

Interrogatory No. 34

Why was Edgar Wallace a party to the January 23, 1932 agreement with RKO General, Inc. whereby RKO General was given the right to produce the 1933 movie King Kong?

Response to Interrogatory No. 34

Universal is not in the position to say "why" Edgar Wallace was a party to this agreement, although the matter is recounted in the Findings referred to in Universal's responses to previous interrogatories.

Interrogatory No. 35

Has Universal succeeded to any rights of Edgar Wallace in the name, character and/or story of King Kong? If so, state how Universal has succeeded to such rights and identify all documents that refer or relate to Universal's claim of such rights.

Response to Interrogatory No. 35

As it was determined that Edgar Wallace had no rights in the name, character and story of King Kong, Universal cannot meaningfully be said to have succeeded to such rights. However, Universal secured from one of Mr. Wallace's heirs a "quitclaim" to whatever rights Wallace purported to own, in conjunction with its lawsuit against RKO in federal district court in 1975. The documents relating to this transaction are included in Document Folder No. 31. Universal declines to produce communications between and among its counsel relating to the "quitclaim" secured by Universal on the ground that these communications are privileged.

Interrogatory No. 36

Identify the agreements between Merian C. Cooper and RKO General, Inc. whereby RKO General, Inc. was granted the right to produce the 1933 movie "King Kong" and the sequel "Son of Kong." Attach true and correct copies of such agreements to your response.